

## TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

### NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to amend regulations under the FRANCHISE INVESTMENT LAW relating to the offer or sale of a franchise over the Internet.

### PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication addressed to, and received by, the Department's contact person on or before 5 p.m., March 24, 2000. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

### INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The Department regulates the offer and sale of franchises under the Franchise Investment Law ("FIL"). Under the FIL, it is unlawful to offer or sell any franchise in this state unless the offer has been registered with the Commissioner or is exempt from registration by Corporations Code Sections 31100 through 31104, by rule of the Commissioner, or excepted from the definition of a franchise under Corporations Code Section 31005(c).

Corporations Code Section 31013 provides that an offer to sell is made in this state when the offer to sell originates from this state, or the offer to sell is directed by the offeror to, and received by, the recipient in this state. An offer to sell is accepted in this state when acceptance is communicated to the offeror in this state.

The Internet, the World Wide Web, and similar proprietary or common carrier electronic systems (collectively, the "Internet") has facilitated the ability of one person to communicate with a larger number of persons. Communication made on the Internet may be directed not only to specific recipients, but also to anyone with access to the Internet. Franchisors have used and will continue to use the Internet, through bulletin boards, home pages or similar electronic communications methods, as a means of "advertising" their franchise offerings. These Internet communications will be received in this state regardless of the intent of the person originating such communications.

The "offer or sale of" a franchise is broad enough to include an attempt or offer to sell, or the solicitation to buy, a franchise in this state that is made on or through the Internet ("Internet Offer"). Such Internet Offers may be subject to the registration requirements of the FIL.

Because of the uniqueness of Internet communications and because an Internet Offer can benefit the prospective franchisees and the franchisor, the Commissioner finds that the registration of Internet Offers for the sale of franchises is not necessary or appropriate in the public interest or for the protection of investors.

### New Section 310.100.3

The Commissioner proposes to adopt new Section 310.100.3 under Title 10 of the California Code of Regulations to exempt an Internet Offer from the registration requirements of Corporations Code Section 31110, provided:

1. The Internet Offer indicates that the franchise is not being offered to the residents of the State of California.
2. The Internet Offer is not otherwise directed to any person in California by or on behalf of the franchisor or anyone acting with the franchisor's knowledge.
3. The Internet Offer must be registered and declared effective, and the disclosure requirements of the FIL met, prior to the sale of the franchise in California.

Reliance upon this exemption does not preclude a franchisor from relying on another exemption provided under the FIL or the rules thereunder.

### AUTHORITY

Sections 31100, Corporations Code.

### REFERENCE

Sections 31013, Corporations Code.

### AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department of Corporations adopts the regulations. A request for a copy of any modified regulation should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

### AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document OP 15/99-B. A statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document OP 15/99-C. As required by the Administrative Procedure Act, the Office of Policy maintains a rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Policy, 980 Ninth Street, Suite 500. Sacramento, California.

### ALTERNATIVES CONSIDERED

The Department must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the above action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### FISCAL IMPACT

- Cost or Savings to the State: None.
- Direct or indirect costs or savings to the state or in federal funding: None.
- Cost to Local Agencies and School Districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- No other nondiscretionary cost or savings are imposed on local agencies.
- Costs to Private Persons or Businesses: Insignificant or none.
- Effect on Housing Costs: None.

### DETERMINATIONS

The Commissioner has determined that the proposed regulatory action:

- Affects small businesses. The express terms of the proposed action written in plain English are available from the agency contact person named in this notice. Copies may also be obtained from any office of the Department upon request. Request Document OP 15/99-B.
- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; (3) the expansion of businesses currently doing business within the State of California.

### CONTACT

Comments or inquiries concerning these proposed regulation changes may be directed to WILLIAM KENEFICK, Acting Commissioner. Department of Corporations. 980 Ninth Street, Suite 500. Sacramento, California 95814. (916) 322-3553.

Dated: January 13, 2000  
Sacramento, California

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WILLIAM KENEFICK  
Acting Commissioner